

**Meeting of the  
Board of Medical Assistance Services  
600 East Broad Street, Suite 1300  
Richmond, Virginia**

**September 14, 2004**

**DRAFT Minutes**

**Present:**

Aneesh Chopra  
Rose C. Chu  
Phyllis L. Cothran  
Terone B. Green  
Manikoth G. Kurup, M.D. (Chair)  
Indira Moran  
Elmer E. Neil, M.D.  
Robert D. Voogt, Ph.D.  
Michael Walker

**Absent:**

Marc Wheat  
Dorn V. Williams, Sr.

**DMAS Staff:**

Tyris Blathers, Admin. Office Specialist III  
Scott Crawford, Director of Provider Reimbursement  
Adrienne Fegans, Program Operations Administrator  
Paige Fitzgerald, Counsel to the Board  
Steve Ford, Manager, Provider Reimbursement  
Cynthia Jones, Chief Deputy Director  
Karen Lawson, Supervisor of LTC Policy  
Nancy Malczewski, Board Liaison  
Craig Markva, Manager, Office of Communications &  
Legislative Affairs

**Speakers:**

Patrick W. Finnerty, Director  
Cheryl J. Roberts, Deputy Director of Operations  
N. Diana Thorpe, Director of Long Term Care and Quality  
Assurance

**Public Comment Speakers:**

Lee Burkholder, First Care Health Services  
Charlene Peters, IVNA  
Clifton Strane, IVNA  
Marcia Tetterton, VAHC  
Kathy Vesley, Bay Aging

**Call to Order**

Dr. Manikoth G. Kurup, Chairman of the Board, called the meeting to order at 10:10 a.m. He introduced the newest Board Member, Indira Moran, and asked everyone to introduce themselves starting with Board Members, then everyone else in the room.

Dr. Kurup reminded the Members the next meeting of the Board will be held December 14, 2004 at Department of Medical Assistance Services (DMAS). At the next meeting, the 2005 meetings will be scheduled.

### **Conflict of Interest**

Mr. Finnerty informed the Board that the 2004 General Assembly Session passed legislation requiring everyone that has to fill out the Conflict of Interest form (including appointees) must complete a training program. The Office of the Attorney General (OAG) has developed a program and has offered to provide the training for the Board. It will take approximately 90 minutes.

### **Approval of Minutes from July 13, 2004 Meeting**

Dr. Kurup asked for a motion to review and approve the Minutes of the July 13, 2004, meeting. Dr. Neil made the motion to accept the Minutes and Ms. Chu seconded.

The vote was 8-yes (**Chopra, Chu, Green, Kurup, Moran, Neil, Voogt, and Walker**); 0- no. Note: Ms. Cothran arrived late and was not here at the time of the vote.

### **Bylaws Amendment**

Ms. Fitzgerald noted when she gave an overview of the Bylaws in the spring that an update was required to the Bylaws in order that they comply with all of DMAS' statutory authority. Section 3.1 and Section 3.3 should have included a reference to Chapters 13 and 13.1 of the Code of Virginia. Chapter 13 deals with the Family Access to Medical Insurance Security (FAMIS) Plan, while Chapter 13.1 deals with the Certified Nursing Facility Training Initiative. Those Chapters were added in the last few years since the Bylaws were initially drafted. The amendment was submitted at the last meeting for review, and it should be voted upon today. There were questions and discussion regarding the Code again. Mr. Finnerty noted that the amendment was to keep the Bylaws current with the Code.

Mr. Green made the motion to approve the Bylaws, and Mr. Chopra seconded. The vote was 8-yes (**Chopra, Chu, Green, Kurup, Moran, Neil, Voogt, and Walker**); 0- no. Note: Ms. Cothran was not here at the time of the vote.

### **Long Term Care**

Ms. N. Diana Thorpe, Director of Long Term Care and Quality Assurance Division, gave an overview of the Long Term Care (LTC) program. She highlighted the different institutional services and the community based services. Ms. Thorpe discussed the preadmission screening mandated by the Code of Virginia, and those eligible for LTC services. She noted that LTC recipients had to contribute to their cost of care called "patient pay."

Ms. Thorpe explained in greater detail the institutional services and agencies responsible for licensing provider facilities.

Ms. Thorpe explained the community based services, and the three types of Medicaid Waivers: Research and Demonstration (Section 1115), Freedom of Choice (Section 1915(b)), and Home and Community Based Services (Section 1915(c) and (d)). The Centers for Medicare and

Medicaid Services (CMS) approves the waivers. The waiver must be cost effective, it cannot cost the federal government more than it would have cost without the waiver. The individual applying for the waiver must meet the same criteria that is used for admission to an institution, and must be offered the choice between the waiver and alternate institution. The State and CMS agree to a number of slots that will be available for the waiver, and then States must conduct annual reviews for level of care.

Ms. Thorpe continued to explain the factors to consider when determining costs of waivers to states. 1) The number of individuals served, 2) Type and amount of services provided, 3) Reimbursement rates paid to providers for services, and 4) Whether individuals in the waiver truly would have entered the institution. She mentioned the three proposed waivers.

Ms. Thorpe described the multiple Advisory Groups that DMAS has met with to discuss issues of concern including rates. She concluded with several Grants offered by CMS that DMAS has been able to access. She explained how DMAS was utilizing the funds—specifically for training.

There were numerous questions regarding the waiver programs.

### **Executive Directive 2 (ED 2) Governor's Working Group on Rural Obstetrical (OB) Care**

Ms. Cheryl J. Roberts, Deputy Director of Program Operations, reviewed the background of events leading up to the Governor issuing Executive Directive 2 (ED 2) as a means of addressing a critical problem of access to obstetrical care in Virginia.

Ms. Roberts noted the Work Group membership, which is appointed by the Governor, has increased from 17 members to 40 within the last two months. At the recommendation of the Board of Medical Assistance Services (BMAS) four new members were appointed.

Ms. Roberts noted the Interim Report was issued to the Governor July 1, 2004, and went over the Work Group's recommendations. The Governor issued an emergency regulation to increase Medicaid payments for obstetrical care by 34 percent effective September 1, 2004. The Health Maintenance Organizations (HMO) also agreed to raise their reimbursement rates since DMAS increased their capitation rates.

Ms. Roberts noted six public hearings (Town Hall) were held throughout the Commonwealth with approximately 300 people in attendance, and mentioned the common themes expressed.

Ms. Roberts noted the Work Group met on September 2<sup>nd</sup>. The Reimbursement and Barriers to Access Subcommittees provided their final recommendations which she expounded upon. She noted the next meeting of the Work Group is scheduled for September 27, at 9:30 a.m., in the General Assembly Building, House Room D, which all Board Members are invited to attend. At that meeting, the Malpractice and Quality of Care Subcommittees will make their presentations. The Work Group will vote on the recommendations from all subcommittees. The recommendations will be included in the Final Report to the Governor which should be completed by November 1<sup>st</sup>.

### **Dental Program**

DMAS Director, Patrick Finnerty, gave a brief overview of the Dental Program, and reminded the Board that Medicaid dental benefits are provided to children, not adults.

Mr. Finnerty emphasized that more providers are needed to treat children in the program. Specifically, only 17 percent of dentists in Virginia participate in the Medicaid program. He noted DMAS' restructuring of the Dental Program and the steps taken to increase participation of dentists.

The dental community urged DMAS to establish a "single vendor" dental program. The 2004 Appropriations Act authorized the agency to "carve out" dental services from the Medicaid Health Maintenance Organizations (HMOs) and administer it as a fee-for service program. The Virginia Dental Association's (VDA) Board of Directors and the Medicaid Dental Advisory Committee endorsed contracting the program out to a third party vendor as long as DMAS retains policymaking authority and monitors the program.

Mr. Finnerty explained some of the recent actions taken by DMAS such as: The Request for Proposals (RFP) is being drafted, the Dental Program Manager has been hired, a dental unit is being created, Dr. Neil and Mr. Finnerty met with minority dentists to garner support and involvement in the program, Mr. Finnerty spoke at the Virginia Dental Association's annual conference, and the Dental Advisory Committee was expanded.

Mr. Finnerty concluded with the next steps in the program. DMAS will be working with the managed care organizations (MCO) to transition the children appropriately. This will also involve the advocates who very much want to see this program succeed. Mr. Finnerty, and/or the new Dental Manager, will meet with VDA members across the state. Mr. Finnerty and Dr. Kurup will meet with the Board of Dentistry Chairman and Executive Director to enlist their support. An outreach plan will be developed for BMAS Members to assist in making this successful. The new program is anticipated to begin prior to July 1, 2005.

### **BIENNIAL REPORT**

Mr. Finnerty noted there is a statutory requirement that the Board send a biennial report to the General Assembly. In the past, a letter to the appropriate members of the General Assembly was sent with the DMAS Statistical Record. Despite the significant volume of information contained in the Record, it is believed that the Board should submit a more detailed report including: the content and purpose of meetings, activities with which Members are involved, including legislative issues, and participating in the various Advisory Committees. Mr. Finnerty suggested that DMAS prepare a draft of this report and send a copy to the entire Board in advance of the December meeting to get the Members' comments, make edits, and bring the final report to the December Board Meeting.

## **OLD BUSINESS**

### **Regulatory Activity Summary**

Mr. Finnerty noted the Regulatory Activity Summary was included in the Members' books to review at their convenience. He informed the Board that Ms. Vicki Simmons, who has been handling the Agency's Regulatory activities for many years will be retiring in December 2004. She will be missed.

### **New Business**

Mr. Green suggested that the Board tour DMAS. Mr. Finnerty noted that such a tour could be arranged, and noted the employees would be happy to know that the Board has an interest. Dr. Voogt suggested that we do the tour after the December 14<sup>th</sup> meeting, and that the Conflict of Interest training be held the same day.

Mr. Walker thanked Messrs. Scott Crawford and Steve Ford for their help on working on the issue of "Personal Care Rates and Costs."

### **Public Comment**

Ms. Marcia Tetterton, VAHC, noted when she saw the BMAS agenda, with LTC, that she thought this would be a perfect opportunity to address the Board about the challenges faced by the personal care provider community. She indicated that several persons wanted to ask the Board to recommend an increase in personal care rates; and introduced those who wished to make public comment.

Ms. Charlene Peters, Executive Director of IVNA, stated IVNA has provided full service home care in the Richmond community since February 1900. Since the inception of the company, many of the services still continue to this day. She noted the people they serve are a cross-section of the entire community. Regarding the Tech Waiver which Ms. Thorpe mentioned, there is no waiting list, however, IVNA cannot provide that service anymore because they cannot afford the cost, nor do they have the staff. Every non-profit company has to "fund-raise" to supplement the cost of the care to keep up the quality. She introduced Mr. Clifton Strane, who was Chairman of the Quality Control Committee for IVNA for five years, who is aware of the struggle to maintain high quality with low reimbursement. Ms. Peters assured the Board that if they received a rate increase they would pass some of it on to the aides.

Mr. Clifton Strane, IVNA, noted that the home health aides live in poverty. They do not have college degrees. Some do not have transportation to take them to and from work. Some are former welfare recipients. If someone becomes homebound, they will come to the home to perform the basic activities of daily living (ADL), such as: toileting, bathing, cooking, basic housecleaning. Their compensation is barely above the poverty level. The IVNA has held fundraisers in order to purchase items for the aides, such as school supplies, toys for Christmas, and basic supplies as many of the aides did not have enough money to purchase these for their children.. Many of the aides take the bus with supplies that are needed to attend to someone's home health needs. They may have four or five patients per day. He asked the Board to increase their salaries by 40 percent.

Lee Burkholder, First Care Health Services, works in South Boston providing personal home care to citizens in the ten county area since 1988. He asked Governor Warner to increase the budget for skilled care in the waiver program. He noted in 2002 the company instituted cost-cutting measures, such as: salaries, limited mileage reimbursement, limited benefits (some paid vacation), and no health insurance, but the company continued to lose money in past years. He noted that 86 cents of every dollar goes to staff; the rest of the money goes to overhead, supplies, postage, telephone, taxes, license and criminal records check. The turnover rate is fairly high at 25 percent. The liability premium in 2003 was \$10,000 and tripled to \$30,000 in 2004. He asked for help in preserving the program by rebasing the waiver services by 40 percent and to provide for annual increases and rebase it every three years.

Kathy Vesley-Massey, Senior Vice President of Bay Aging, a non-profit Area Agency on Aging and a Medicaid personal care provider, stated that her organization serves the ten counties of northern neck and the middle peninsula. She provided to the Board three clients' photos and a short summary of their situation of what Medicaid personal care means to them. Bay Aging serves 2600 rural square miles around the Chesapeake Bay. It is impossible to maintain a sufficient aide pool to provide needed services. She has been there six years and has seen provider after provider close its doors because they can no longer operate with low Medicaid reimbursement. Currently, they serve 239 Medicaid personal care clients with 141 part-time aides. The aides use this money to supplement their other jobs. Last year she lost 40 aides (22 percent) from their aide pool for better paying jobs and benefits. The end result is 1) premature institutionalization since no one will come to their home to help them, 2) families torn apart with difficult decisions of quitting work to take care of a loved one who will otherwise be placed into an institution, and 3) the person will do without—without nutritious meals, without bathing, will not leave his/her home, but will die there. She asked the Board to please go to Governor Warner and ask for a 40 percent increase in waiver services in this budget.

There was much discussion by the Board regarding the fiscal impact of such an increase in reimbursement, measuring how many people would prematurely be institutionalized, and the high LTC care cost vs. in-home care. Regarding the fiscal impact, Mr. Finnerty directed the Board to the document in the back of the LTC presentation which shows the personal care rates and costs, and includes the different percentages of increase. It would cost the State approximately \$25 million (and the Federal Government would pay the matching portion). Mr. Finnerty reminded the Board that in December 2003, they had written to the Governor supporting his tax proposal. The Board could write a letter to the Governor with their support of an increase if they wished to do so. The 40 percent increase reflects the amount that the provider community would have received today had the rates been adjusted for inflation over the past several years.

Dr. Voogt made a motion to write a letter to the Governor to support the 40 percent increase to personal care providers in the upcoming budget and Ms. Moran seconded. The vote was **6-yes (Cothran, Green, Kurup, Moran, Voogt, and Walker); 2- no. (Chopra, Chu)** Note: Dr. Neil was not here at the time of the vote.

### **Adjournment**

Dr. Kurup thanked everyone and adjourned the meeting at 12:45 p.m.